

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THRIVEST SPECIALTY FUNDING, LLC

v.

Civil Action No. 2:18-CV-1877

WILLIAM E. WHITE

**THRIVEST’S BRIEF IN FURTHER SUPPORT OF ITS
EMERGENCY MOTION FOR CONTEMPT AND IN RESPONSE TO
THE COURT’S AUGUST 16, 2019 ORDER**

Thrivest Specialty Funding, LLC (“Thrivest”) files this brief in further support of its Emergency Motion for Contempt (Dkt. 26, filed on July 9, 2019) and in response to the Court’s August 16, 2019 Order (Dkt. 31).

ARGUMENT

There is no dispute. William White has not complied with the Court’s July 1, 2019 Order (Dkt. 25) confirming the Emergency Arbitrator’s Interim Award of Emergency Relief (the “Award”). The Award, which became an order of this Court on confirmation,¹ directed Mr. White to escrow \$1.25 million in his attorney’s trust account pending resolution of the arbitration on the merits. Mr. White has had more than two months to comply, but has taken no action to do so.² This Court has the exclusive authority to enforce its July 1, 2019 Order. The arbitrator has no such power and cannot hold Mr. White in contempt or otherwise enforce the Award.

¹ Under the Federal Arbitration Act, an order confirming an arbitration award “shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and *it may be enforced as if it had been rendered in an action in the court in which it is entered.*” 9 U.S.C.A. §13 (emphasis added).

² Mr. White asserts that compliance is “not possible”; however, he submits no evidence to support his conclusory assertion—which must be questioned in view of his recent receipt of a \$3.5 million award in the NFL Concussion Litigation (on top of the \$500,000 advance he received from Thrivest in December 2016).

“There can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt.” Mayer Bros. Const. Co. v. Dinsick Equip. Corp., CA 11-14 ERIE, 2013 WL 4434912, at *2 (W.D. Pa. Aug. 16, 2013) (quoting Shillitani v. United States, 384 U.S. 364, 370 (1966)); see also Marshak v. Treadwell, 595 F.3d 478, 485 (3d Cir. 2009) (affirming contempt order for violation of injunction). That authority includes the power to enforce orders confirming arbitration awards. See CE Int’l Res. Holdings LLC v. S.A. Minerals Ltd. P’ship, No. 12 CIV. 8087 CM, 2013 WL 324061, at *3 (S.D.N.Y. Jan. 24, 2013) (holding party in contempt of court for noncompliance with order confirming interim arbitration award directing escrow of disputed funds); see also 9 U.S.C.A. §13; U.S. For Use & Benefit of Salvino Steel & Iron Works, Inc. v. Safeco Ins. Co. of Am., 181 F. App’x 247, 252 (3d Cir. 2006) (reversing contempt finding due to ambiguity regarding compliance, but otherwise recognizing court’s authority to enforce confirmed arbitration award through contempt power). There is no ambiguity here. Mr. White has not complied and is ignoring the Court’s directive. The Court must hold Mr. White in contempt for violating the July 1, 2019 Order.

In its Emergency Motion to Confirm the Award (Dkt. 21), Thrivest explained, “[a]rbitrators have no power to enforce their decisions[;] [o]nly courts have that power.” See Recyclers Ins. Group., Ltd. v. Ins. Co. of North America, No. 91-503, 1992 WL 150662, *3 (E.D. Pa., June 15, 1992) (citing Pacific Reins. Mgt. Corp. v. Ohio Reins. Corp., 935 F.2d 1019, 1023 (9th Cir. 1991)). Consistent with that settled law, the American Arbitration Association Rules do not contain contempt procedures and the AAA makes clear, in its published guidance to neutrals, that “arbitrators do not have the authority to hold a party in contempt.” See Guide for Commercial Arbitrators, available at https://www.adr.org/sites/default/files/document_repository/A%20Guide%20for%20Commercial%20Arbitrators.pdf (last accessed Aug. 20, 2019). Indeed, the FAA

specifically defers enforcement to the courts. See 9 U.S.C.A. §13; see also Certain Underwriters at Lloyd's London v. Argonaut Ins. Co., 264 F. Supp. 2d 926, 944 (N.D. Cal. 2003) (noting that “[n]othing in the explicit language of the FAA authorizes such inherent power upon arbitrators” and that imposition of civil contempt by arbitrator “could burden a party’s right to pursue judicial review of a ‘final’ interim order”). Accordingly, the Court has the exclusive authority to enforce its July 1, 2019 Order and Thrivest’s emergency motion for contempt is ripe for disposition here.

Judge Platt’s Award was predicated on specific findings: (1) that “there is a strong likelihood that [Thrivest] will prevail on the merits of this case and that Thrivest’s Agreement with [White] will be enforced pursuant to the terms contained therein”; and (2) that Thrivest “has demonstrated a real likelihood that the settlement funds distributed to Mr. White are in danger of being dissipated, if not already dissipated, such that [Thrivest] will be unable, if successful on the merits, to collect the money owed it pursuant to the Agreement.” (Dkt. 21-3 at 17). Those findings are now more than two months old. Having confirmed the Award, this Court has a clear obligation to enforce the July 1, 2019 Order. It cannot defer to the arbitrator, who lacks such authority. Further delay in enforcing compliance will only cause Mr. White to incur additional liabilities. Accordingly, Thrivest respectfully requests that the Court hold Mr. White in contempt and enforce the Award through an appropriate order.

Respectfully submitted,

FOX ROTHSCHILD LLP

Dated: August 21, 2019

By: /s/ Peter C. Buckley

Peter C. Buckley, Esquire
Eric E. Reed, Esquire
FOX ROTHSCHILD LLP
2000 Market Street—20th Floor
Philadelphia, PA 19103
(215) 299-2854
(215) 299-2150 (facsimile)

Attorneys for Thrivest Specialty Funding, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THRIVEST SPECIALTY FUNDING, LLC

v.

WILLIAM E. WHITE

Civil Action No. 2:18-CV-1877

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 2019, I caused Thrivest's Brief in Further Support of its Emergency Motion for Contempt and in Response to the Court's August 16, 2019 Order to be filed via the Court's electronic filing system which provides notice to all counsel of record, including:

Robert Wood, Esquire
Wood Law Limited
68 North High Street
Building B, Suite 202
New Albany, Ohio 43054
Attorneys for William E. White

/s/ Peter C. Buckley, Esquire
Peter C. Buckley, Esquire
Eric E. Reed, Esquire
FOX ROTHSCHILD LLP
2000 Market Street—20th Floor
Philadelphia, PA 19103
(215) 299-2854
(215) 299-2150 (facsimile)

Attorneys for Thrivest Specialty Funding, LLC